

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE:

MAR 9 1981

SUBJECT:

Reilly MN Meeting DOJ - U.S. EPA

US EPA RECORDS CENTER REGION 5



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FROM:

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Engineering Section

TO:

File

THRU: William E. Muno, Chief *WEM*
Engineering Unit I

I. Purpose

The purpose of this meeting was to inform the attendees of recent developments in the new Superfund (\$F) Act and to develop a strategy, with contingencies, for the Reilly litigation.

II. Date, Time and Place

February 23, 1981
10:00 a.m. - 3:30 p.m.
Department of Justice
Nineth and Pennsylvania
Washington, D.C.

III. Attendees

Tony Roisman	- DOJ
Erica Dolgin	- DOJ
Tom Berg	- U.S. Attorney, District of Minnesota
Frank Hermann	- U.S. Attorney, District of Minnesota
Lamar Miller	- EPA, HQ
Fred Stiehl	- EPA, HQ
Frank Biros	- EPA, HQ
Ken Fenner	- EPA, Region V
Melanie Toepfer	- EPA, Region V
Bob Leininger	- EPA, Region V

IV. Discussion

The meeting was an information exchange between the agencies and divisions. Roisman made a few opening remarks. Berg then listed a number of topics for which he has concern and/or wanted more information. These were:

1. Amendment of complaint to include a \$F count

- a. State
- b. Federal

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2. Coordination problems
3. Motion to dismiss
4. What can Reilly afford?
5. What is our position?

Superfund

Roisman said that he had been in constant contact with Mike Cook regarding \$F developments. It is anticipated that a \$F public announcement will be made on Wednesday. Reilly is one of approximately 20 sites being funded for further engineering development of remedial plans and specifications. The money is not actually from \$F, but has been appropriated from other accounts. The demand will be made under \$F §104(b) because it does not require a presidential determination. §107(3)(c) requires that a presidential determination be made prior to any demand. The \$F "demand" letter was to be from Berg to Schwartzbauer. A draft letter was to be given to Berg on Tuesday.

We also discussed amending the Reilly complaint to include a count under \$F. The count would be included under §107(a), not §107(c) because there has been no presidential delegation of \$F authority yet. After some discussion, it was agreed that the complaint should be amended to include \$F pending a final answer by Lamar Miller. The strongest argument for \$F was to amend the complaint now, while permission is not required and avoid allowing the State of Minnesota to litigate a new Federal statute. The counterargument was to wait and amend all \$F counts at once. However, this strategy would require the court's permission and give Reilly a chance to argue against the amendment.

Lamar informed us that \$F monies will probably not be available in 1981. HQ does not expect that any private monies will be collected in 1981. Therefore, the only money available will be the 12.5% share from the Federal government. Lamar said that he did not expect hardware from money to be available in FY 82.

Case Strategy

It was decided at this meeting that the trial should be bifurcated: the Federal government should first litigate Reilly's liability and then litigate relief or damages. This approach might allow us to win on the liability question and then negotiate relief with Reilly from a much stronger position. It was admitted that a relief program would have to be negotiated, because Reilly cannot afford to pay for total cleanup.

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During this meeting it was also decided that the motion to dismiss should be argued as soon as possible and that we do not want to appear to be frightened by Reilly's motion. We intend to give Reilly a draft consent decree on approximately 4/15/81 and, hopefully, to begin incremental negotiations on 5/1/81. Berg will ask the judge for several weeks in the fall of 1981 for a hearing on the liability issue, in the event that negotiations break down.

The consent decree is to be redrafted by myself. It will include the following additional issues:

1. Reilly must show their economic worth to the Federal Government.
2. Other pollutant sources, as demonstrated by Reilly, of divisible, distinguishable groundwater contaminants will be pursued for their contribution to the remedial program. (I promised to draft RCRA §3007 letters to the alternative sources in the next two weeks.)
3. Reilly will be responsible for isolation of the site for existing uses and users, not future uses and users.

We then discussed my memo. Roisman does not want to exclude soil contamination from any cleanup negotiation with Reilly.

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